

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRANK FAHY,
Plaintiff,
v.
ORPHEOS TARBOX, et al.,
Defendants

No. C-09-1420 MMC

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S MOTION FOR
ORDER TO ENLARGE TIME FOR
AMENDING COMPLAINT**

Before the Court is plaintiff Frank Fahy's "Motion for Order to Enlarge Time for Amending Complaint," filed July 30, 2010, by which motion plaintiff seeks an extension of the August 2, 2010 deadline to file a motion to amend the pleadings.¹ Defendants have not filed a response. Having read and considered the motion, the Court hereby rules as follows.

A scheduling order, such as an order setting a deadline to file a motion to amend, may be modified only upon a showing of "good cause" by the party seeking the modification. See Fed. R. Civ. P. 16(b)(4). "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). A "district court may modify the pretrial schedule if it cannot reasonably be met despite the diligence of the party seeking

¹The deadline is set forth in the Civil Minutes filed May 28, 2010.


1 the extension.” Id. (internal quotation and citation omitted).

2 In his motion, plaintiff asserts he needs further time to determine whether grounds to
3 amend may exist. Plaintiff does not indicate the nature of any proposed amendment,
4 however. In the absence of a showing as to the nature of the proposed amendment, the
5 Court cannot determine whether plaintiff has been diligent. Cf. Johnson, 975 F.2d at 609
6 (affirming district court’s finding plaintiff had not been diligent in seeking leave to amend,
7 where plaintiff was aware of basis for proposed new claim before deadline to amend had
8 passed).

9 Accordingly, plaintiff’s motion for an enlargement of time is hereby DENIED without
10 prejudice.

11 **IT IS SO ORDERED.**

12
13 Dated: August 10, 2010

14 
15 MAXINE M. CHESNEY
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28